

General Information Letter: Response to question re withholding on employee residing and working in Florida.

January 8, 1998

Dear:

This is in response to your fax dated January 7, 1998 in which you request a formal letter ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have requested a formal letter ruling, the limited information you have provided requires that we respond with a general information letter.

In your request you stated:

We have a client who works and lives in the state of Florida. They own a corporation, located in the state of Illinois, from which they draw a salary. Our client does not file a personal income tax return in the state of Illinois and also does not withhold Illinois income tax on the salary. We feel this scenario is correct.

We would like a former letter ruling, code section of the law, etc. to support our thinking. Please fax us this information as soon as possible so we can have something in our files.

Department Analysis

Illinois Income Tax Act ("IITA") §302(a) states "[a]ll items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocated to this State." Section 304(a)(2)(B) defines compensation paid in Illinois to be:

- (i) The individual's service is performed entirely within this State;
- (ii) The individual's service is performed both within and without this State, but the Service performed without this State is incidental to the individual's service performed within this State; or

(iii) Some of the service is performed within this State either the base of operations, which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State. Beginning with taxable years ending on or after December 31, 1992, for residents of states that impose a comparable tax liability on residents of this State, for purposes of item (i) of this paragraph (B), in the case of persons who perform personal services under personal service contracts for sports performances, services by that person at a sporting event taking place in Illinois shall be deemed to be a performance entirely within this State.

Thus, so long as all of a nonresident's services occur outside of Illinois, he or she does not receive compensation paid in Illinois as defined by §304(a)(2)(B).

Section 701(a) of the IITA states that withholding taxes is required of:

(a) In General. Every employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold a tax on:

(1) compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual...

Accordingly, while this is not a formal letter ruling, the IITA does not tax the compensation of a non-resident who performs no services within Illinois, nor require the withholding of taxes on such compensation.

If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian
Staff Attorney
Income Tax Division